

To: The Federal Communications Commission

From: John McCarthy, Executive Director, The International Health, Racquet & Sportsclub Association (IHRSA)

Re: Recently amended regulations on facsimile transmissions

As the executive director of the International Health, Racquet & Sportsclub Association (IHRSA), which represents 6,500 health and fitness businesses, and that communicates with a significantly greater number of businesses on a regular basis, I would like to present concerns and to seek clarification on the recently amended fax regulations that implement the TCPA.

IHRSA has grave concerns about the impact these new regulations will have on the association's ability to serve both our membership and other businesses in the health and fitness industry with which we have frequent communications. Our membership, in particular, benefits greatly from, and is reliant on, the information, opportunities, and resources that IHRSA offers via fax communications.

Many of the association's members are franchises or chains. The FCC fax regulations leave ambiguity regarding a corporate office's ability to provide consent on behalf of its subsidiaries. Within a business, especially a large one, it is unclear if one executive can give permission for all of a business's fax numbers. Similarly, it is unclear whether association members that also belong to a regional affiliate are required to provide consent to both IHRSA and the regional affiliate.

In terms of the actual consent, it is unclear precisely what language and form constitute legitimate express consent. For example, it is unclear if the person or entity providing consent needs to list the fax numbers, or if it is sufficient for the business asking for consent to list them and the person to provide their signature.

An additional concern for the health and fitness industry relates to the rapidly changing nature of these kinds of businesses. Health clubs, for example have rapid staff turnover rates. If an authorized staff member at a health club gives IHRSA permission to fax the club, it is unclear if this consent remains valid in the event that particular staff member leaves the club. Although association members frequently apprise us of staffing changes, non-members with whom we communicate via facsimile do not often do so. Similar questions arise in the event of a change of ownership or a change in the physical location, and therefore the fax number, of a business. Finally, it is unclear whether consent continues after a business terminates its membership yet does not specifically rescind its consent to receive communications from IHRSA via fax.

More generally speaking, IHRSA, along with numerous other associations, seeks clarification on what kinds of communications the FCC defines as "commercial." For example, it is unclear if PAC solicitations would be considered unsolicited fax communications.

IHRSA supports ASAE's petition for a stay and petition for clarification on the issue of how the new fax regulations should relate to tax-exempt non-profit associations.

I thank you for your consideration and urge you to both clarify and reconsider the new fax regulations.